

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JAMES E. FEEHAN,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	3:03cv1807 (SRU)
	:	
PAUL M. LENGYEL, et al.,	:	
Defendants.	:	
	:	

RULING ON MOTION TO DISMISS

James E. Feehan, after being arrested, sued Paul M. Lengyel, whose investigation led to the arrest; Stephen Sedensky, the prosecutor who procured the warrant for the arrest; David Best, Lengyel’s supervisor; and the State of Connecticut. Feehan alleges violations of section 1983 and the Connecticut State Constitution. All the individual defendants move to dismiss all claims against them in their official capacities as barred by the Eleventh Amendment. Sedensky moves to dismiss all claims against him as barred by absolute prosecutorial immunity. Best moves to dismiss the section 1983 claims against him for failure to allege personal involvement. I agree with the individual defendants, and all claims moved against are dismissed.

I. Background

The following facts, accepted as true for the purpose of this motion, are alleged in the complaint.

In March 2000, Patricia Kronenberg, a member of the town council of Stratford, filed a complaint with the Stratford Police Department alleging that Feehan, also a member of the town council, had told her that if his company did not get a certain contract with the town, he would not vote with her on a particular issue. Lengyel, an inspector for the State’s Attorney’s Division of Criminal Justice, investigated the complaint.

In October 2000, Sedensky, a state prosecutor, filed an application in Superior Court for a warrant to arrest Feehan, supported by an affidavit signed by Lengyel. The affidavit did not disclose potentially exculpatory evidence, though both Lengyel and Sedensky were aware the evidence existed.

As a result of Sedensky's application, a warrant issued, and Feehan was arrested. He was ultimately acquitted of all criminal charges.

II. Discussion

I only dismiss those claims that, even assuming the truth of the complaint and drawing all inferences in Feehan's favor, are legally insufficient. *See DeJesus v. Sears, Roebuck & Co., Inc.*, 87 F.3d 65, 69 (2d Cir. 1996).

A. Claims Against Defendants In Their Official Capacity

Feehan does not protest dismissal of his claims against the individual defendants in their official capacities. Even if he did, it would be to no avail. The Eleventh Amendment protects state officials from a suit for damages against them in their official capacities because such an action would result in recovery from the public treasury and, thus, is ultimately a suit against the state. *See Kentucky v. Graham*, 473 U.S. 159 (1985); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 n.11 (1984). Feehan's suit is for damages only, and therefore cannot be brought against the individual defendants in their official capacities.¹

B. Claims Against Sedensky

The claim against Sedensky is that he submitted an application for an arrest warrant

¹ Although the State of Connecticut has not made a motion, the Eleventh Amendment bars Feehan's claims against it. Accordingly, I must dismiss those claims as well.

knowing it was incomplete. Prosecutors are absolutely immune from claims against them for performing their functions as advocates. *Imbler v. Pachtman*, 424 U.S. 409, 410 (1976) (prosecutorial immunity applies to section 1983 claims); *Barese v. Clark*, 62 Conn. App. 58 (2001) (prosecutorial immunity applies to Connecticut state law claims). They are not, however, immune from claims arising from their actions in other capacities, such as investigatory or administrative capacities. *Buckley v. Fitzsimmons*, 509 U.S. 259, 270 (1993). A prosecutor's appearance in court in support of an application for an arrest warrant and the presentation of evidence at that hearing are advocacy functions, protected by absolute immunity. *See Sheehan v. Colangelo*, 27 F. Supp. 2d 344 (D. Conn. 1998), *affirmed*, 2002 WL 31840792 (2d. Cir. 2002). Consequently, Sedensky is absolutely immune from Feehan's claims against him.

C. Claims Against Best

Feehan does not claim that Best, Lengyel's supervisor, was directly connected with the arrest. He alleges that Best is nevertheless liable because he (1) failed to implement appropriate policies for procuring arrest warrants and for hiring and training inspectors and (2) failed to discipline Lengyel.

A supervisor may only be held liable under section 1983 if he was "personally involved" in the alleged constitutional deprivation. Feehan argues that Best's personal involvement is based on (a) his failure to implement appropriate policies and (b) his failure to remedy the wrong to Feehan. Although either of these theories could potentially give rise to section 1983 liability, *see Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995), in this case, the allegations do not support the theories.

Feehan alleges generally that Best did not implement appropriate policies. He does not

allege what policies Best should have implemented or how implementation of any policy would have prevented the alleged constitutional violation. In other words, the allegations neither give Best notice of which of his actions he is to defend nor do they explain how Best caused any injury to Feehan. Feehan's allegations that Best did not appropriately discipline Lengyel are similarly lacking. The complaint does not indicate how disciplining Lengyel would have remedied the alleged violation of Feehan's constitutional rights.

Because a plaintiff may not base section 1983 liability solely on a defendant's supervisory capacity and because Feehan has failed to allege personal involvement by Best, the section 1983 claims² against Best are dismissed.

III. Conclusion

The defendants' Motion to dismiss (doc. # 23) is GRANTED. Counts One, Two, and Four are dismissed against the defendants in their official capacities. Counts Three, Five, Six, and Seven are dismissed.

It is so ordered.

Dated at Bridgeport, Connecticut, this 2nd day of February 2005.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge

² The defendants have not explained what, if any, relevance their arguments against Best's section 1983 liability have to his liability under the Connecticut Constitution. Accordingly, the state law claims against Best are not dismissed.